

Recommendations for CESQG waste collection programs operated by local governments and municipalities

A Conditionally Exempt Small Quantity Generator (CESQG) is defined under the Virginia Hazardous Waste Management Regulations (VHWMR) as a generator of less than 100 kg (220 lbs) of hazardous waste or less than 1 kg (2.2 lbs) of acute hazardous waste in a calendar month, and who never accumulates greater than a total of 1000 kg (2200 lbs) of hazardous waste. Many small businesses fall into this category. Because of the term "conditionally exempt", it is a common misconception that CESQG hazardous waste is excluded from regulation, i.e., that it is not hazardous waste but rather is regulated as a solid waste. Although the CESQG generator is exempted from certain provisions of the hazardous waste management regulations, the waste itself is not excluded from regulation as hazardous waste. It must still be managed as hazardous waste under regulations established in 9 VAC-20-60-261 of the VHWMR and provisions in that section adopted by reference from 40 CFR Part 261.5.

Several local governments operating permitted solid waste management facilities have proposed collection programs inviting central collection and management of local business' CESQG waste. The intent is to provide a means of lessening disposal costs, additional transportation costs and generally higher financial burdens small businesses face when managing their hazardous wastes through a contractor. While most of these programs are designed as one day events with a licensed hazardous waste transporter/disposal contractor present to handle the waste, some localities have explored the possibility of semi-permanent collection facilities located at solid waste landfills. Although Federal and state regulations allow CESQG waste disposal in a properly permitted, licensed, or registered solid waste landfill (but only with written permission from the landfill and VDEQ as required under Virginia regulations), most CESQG wastes collected during these events are disposed of at permitted hazardous waste facilities.

Many RCRA Subtitle D (solid waste) and Subtitle C (hazardous waste) regulation issues potentially impact operation of a municipal CESQG waste collection program. Some are discussed below.

In general, facilities may not receive, store, treat, or dispose of hazardous waste from off-site generators unless they hold a RCRA Part B permit or interim status, or unless the waste is a special category waste managed in accordance with a conditional exclusion, e.g. universal waste or POTWs treating wastewaters. Additionally, any permitted solid waste management facility accepting hazardous waste for storage, treatment, or disposal would be required to modify its Solid Waste Management Permit to include CESQG hazardous waste if not already included. VHWMR 9 VAC-20-60-261 and 40 CFR Part 261 language allows CESQGs to deliver their hazardous waste (with written permission in VA) to a solid waste landfill, but only for disposal purposes rather than collection and storage by the landfill. Therefore, collection of CESQG wastes for storage or treatment, rather than disposal, at a municipal solid waste facility is in conflict with its conditional exclusion under Part 261.5, and such facilities would normally be subject to full regulation as a hazardous waste management facility.

Transporters who hold a valid Virginia Hazardous Waste Transporter Permit may establish a "transfer facility" under VHWMR 9 VAC 20-60-500 (or, if at a solid waste management facility, see also Virginia Solid Waste Management Regulations 9 VAC 20-80-340.A.2), and may store manifested shipments of hazardous waste for up to 10 days without being subject to Part B hazardous waste facility permit requirements. A permitted hazardous waste transporter establishing a transfer facility for a CESQG collection event would qualify.

Legislative changes adopted during the 2004 Virginia General Assembly session clarified definitions and current regulations applications for CESQG collection programs. Language incorporated under H.B. 713 into §10.1-1426 of the Code of Virginia, effective July 1, 2004, states:

F. Any locality or state agency may collect hazardous waste from exempt small quantity generators for shipment to a permitted treatment or disposal facility if done in accordance with (i) a permit to store, treat, or dispose of hazardous waste issued pursuant to this chapter or (ii) a permit to transport hazardous waste, and the wastes collected are

stored for no more than 10 days prior to shipment to a permitted treatment or disposal facility. If household hazardous waste is collected and managed with hazardous wastes collected from exempt small quantity generators, all waste shall be managed in accordance with provisions of this subsection.

Thus, a local or state agency may collect and accumulate CESQG waste for up to 10 days as long as they hold a valid Virginia Hazardous Waste Transporters Permit and comply with all hazardous waste transporter regulations. Operators should be aware that they assume full responsibility for proper management of hazardous waste while in their care under transporter provisions, and are solely responsible for clean up or other liability in the event of a spill or release. Non-compliance with hazardous waste regulations may result in enforcement action and subject the facility to future RCRA Subtitle C jurisdiction. Furthermore, mixing waste streams of different shipping descriptions or mixing CESQG waste with exempted household hazardous waste may subject the collection facility to hazardous waste generator requirements under 9 VAC 20-60-262. Although it is presumed that most localities will establish "transfer facility" collection sites at permitted solid waste facilities they currently operate, it is not a requirement of either the solid waste or hazardous waste regulations, or the language of §10.1-1426 F, to do so.

In order to minimize regulatory impacts, possible harmful effects to the environment or human health due to improper management, release potential, long term exposure to or incompatibility of CESQG wastes, the Department offers the following recommendations for local governments desiring to sponsor CESQG hazardous waste collection programs:

- It is strongly recommended that CESQG waste collection be limited to one-day events, with a permitted hazardous waste transporter/contractor on-site to ensure proper waste identification, handling of potentially incompatible wastes, spill control/emergency response capabilities, and packaging requirements.
- The site location should be on property owned and managed by the sponsoring agent, who can and will assume liability for any spill or release of hazardous wastes.
- In order to maintain their exclusion from VHWMR hazardous waste transporter permit requirements, CESQGs may transport only their own waste to a collection center. They may not transport other generators' wastes or consolidate wastes from several locations unless they hold a current Virginia Hazardous Waste Transporter permit.
- Program sponsors should maintain a log of generators who bring their hazardous wastes to the collection site and ensure, either by signed statement from the generator or by other means, that they are in fact CESQGs eligible to manage their waste under Part 261.5 provisions. Acceptance of waste from generators other than CESQGs would be in violation of Federal and State law, and may subject the generator and the receiving facility to enforcement action.

Operation of a CESQG waste collection program under conditions other than those described above may be in conflict with the VHWMR, VSWMR, and Federal RCRA regulations. Furthermore, improper operation of a CESQG hazardous waste collection site may subject the facility to enforcement action and possible RCRA jurisdiction for the entire site.

It is both economically and environmentally desirable to remove regulatory and financial encumbrances to small businesses to encourage proper management of CESQG hazardous wastes. Local governments and state agencies seeking to assist CESQGs through collection programs are encouraged to contact their appropriate DEQ Regional Office if contemplating such a program. Although we are currently unable to act in the role of consultants or develop detailed collection program implementation plans for localities, DEQ will be pleased to assist with regulatory review of any proposals.

If you have any questions, please contact your DEQ Regional Office, or [Willard Keene](#), Hazardous Waste Compliance Coordinator (276-676-4847), or [Linda Richardson](#) Solid Waste Compliance Coordinator (804-698-4318), in DEQ's Central Office.

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